

United States District Court
Central District of California

TIMOTHY GANTT,
Plaintiff,
v.
CITY OF LOS ANGELES, et al.,
Defendants.

Case No.: 2:08-cv-05979 ODW (CW_x)

Case No.: 2:09-cv-08565 ODW (CW_x)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT [269]**

MICHAEL SMITH,
Plaintiff,
v.
CITY OF LOS ANGELES, et al.,
Defendants.

I. INTRODUCTION

Despite the fact that this case has already proceeded to trial once, Defendants have filed a Motion for Summary Judgment on Plaintiffs' claims for constitutional violations under 42 U.S.C. § 1983. For the reasons discussed below, the Court **DENIES IN PART** and **GRANTS IN PART** Defendants' Motion for Summary Judgment. (ECF No. 269.)

II. FACTUAL BACKGROUND

Timothy Gantt and Michael Smith were tried and convicted of the August 19, 1992 murder of Kalpesh Vardhan, who had been stabbed 19 times during an apparent robbery. (SUF 1–2.) The principal eyewitness of the crime was a local burglar named David Rosemond. (SUF 57.) Rosemond had identified Gantt and Smith after interrogation by police officers. (SUFs 15–16, 19–22.) Rosemond chose Gantt’s photo from a mug book when he recognized Gantt as someone who robbed him in the past. (Rosemond Depo. 38:12–39:9.) Rosemond provided no justification for choosing Smith’s photo. (SUF 33.)

In 2004, the Ninth Circuit reversed the denial of Gantt’s federal habeas petition, holding the prosecutor failed to disclose *Brady* evidence, which negated his alleged connection to the murder victim. (SUF 3.) The Ninth Circuit ordered an evidentiary hearing on remand. (SUF 3.)

The evidentiary hearing resulted in the issuance of a writ of habeas corpus and retrial. (SUF 4.) During the 2008 retrial, Rosemond recanted his original identification of Gantt. (SUF 58.) The prosecution moved to dismiss all charges against Gantt with prejudice, and he was released. (SUF 5.) Smith subsequently prosecuted a writ of habeas corpus and was released in 2009. (SUFs 5, 59.)

Gantt and Smith filed separate lawsuits for violations of their constitutional rights under 42 U.S.C. § 1983, which were consolidated for discovery and trial. (SUF 6.) The lawsuits went to trial on claims for malicious prosecution, due process, and fabrication of evidence, *Brady*, failure to gather and preserve evidence, unconstitutional identification, conspiracy to violate constitutional rights under § 1985, and *Monell* liability. (SUF 7.) The jury returned a verdict for the Defendants on all claims. (SUF 8.)

On appeal, the Ninth Circuit remanded the case for a new trial on three grounds: (1) instructional error on the deliberate-fabrication-of-evidence claim; (2) instructional error on the conspiracy claim; and (3) failure to explain why it did not give a jury

1 instruction on the *Brady* claim. *Gantt v. City of Los Angeles*, 717 F.3d 702, 709 (9th
2 Cir. 2013).

3 III. LEGAL STANDARD

4 Summary judgment should be granted if there are no genuine issues of material
5 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ.
6 P. 56(c). The moving party bears the initial burden of establishing the absence of a
7 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).
8 Once the moving party has met its burden, the nonmoving party must go beyond the
9 pleadings and identify specific facts through admissible evidence that show a genuine
10 issue for trial. *Id.*; Fed. R. Civ. P. 56(c). Conclusory or speculative testimony in
11 affidavits and moving papers is insufficient to raise genuine issues of fact and defeat
12 summary judgment. *Thornhill's Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th
13 Cir. 1979).

14 A genuine issue of material fact must be more than a scintilla of evidence or
15 evidence that is merely colorable or not significantly probative. *Addisu v. Fred*
16 *Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000). A disputed fact is “material” where the
17 resolution of that fact might affect the outcome of the suit under the governing law.
18 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). An issue is “genuine” if
19 the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving
20 party. *Id.* Where the moving and nonmoving parties’ versions of events differ, courts
21 are required to view the facts and draw reasonable inferences in the light most
22 favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

23 IV. DISCUSSION

24 Defendants filed the present Motion for Summary Judgment asserting that they
25 are entitled to summary judgment on the deliberate-fabrication-of-evidence, *Brady*,
26 and conspiracy claims, because either (1) the Defendants are entitled to qualified
27 immunity, or (2) Plaintiffs lack sufficient evidence to support their claims.

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1 Defendants further assert that Plaintiffs cannot adduce any evidence to support their
2 *Monell* claim. The Court considers each in turn.

3 **A. Qualified Immunity**

4 Defendants now—upon remand from the Ninth Circuit—argue that they are
5 entitled to summary judgment because qualified immunity shields them from
6 Plaintiffs’ claims. Qualified immunity protects government officials acting in their
7 official capacities from liability, so long as their conduct does not violate a clearly
8 established right. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). An officer who
9 makes a “reasonable mistake” does not violate a “clearly established” right. *Venegas*
10 *v. Cnty. of L.A.*, 153 Cal. App. 4th 1230, 1241–1242 (Ct. App. 2007). An official is
11 afforded immunity if he acts under an objectively reasonable belief that his conduct is
12 lawful. *Guerra v. Sutton*, 783 F.2d 1371, 1374 (9th Cir. 1986). When analyzing a
13 qualified-immunity analysis, the court determines whether (1) the plaintiff alleged
14 sufficient facts to show that the defendant’s conduct violated a constitutionally
15 protected right, and (2) the violated right was clearly established. *Saucier v. Katz*, 533
16 U.S. 194, 201 (2001). Under the “clearly established” prong, a court considers
17 whether it would have been clear to a reasonable government actor that her conduct
18 was unlawful under the circumstances. *Saucier*, 533 U.S. at 202; *Marquez*, 322 F.3d
19 at 692–93.

20 *1. Deliberate fabrication of evidence*

21 Defendants argue that qualified immunity shields them from Plaintiffs’
22 deliberate fabrication of evidence claims. This argument ignores the Ninth Circuit’s
23 admonition that the fabrication-of-evidence question was “triable and for the jury to
24 resolve.” *Gantt v. City of Los Angeles*, 717 F.3d 702, 708 (9th Cir. 2013).

25 In *Gantt*, the Ninth Circuit expressly stated that “there is a clearly established
26 constitutional due-process right not to be subjected to criminal charges on the basis of
27 false evidence that was deliberately fabricated by the government.” 717 F.3d at 709
28 (quoting *Devereaux v. Abbey*, 263 F.3d 1070, 1074–75 (9th Cir. 2001)). Although the

1 Ninth Circuit found that the Court committed an instructional error, it also found that
2 “there was sufficient evidence to instruct the jury on the claim of fabrication of
3 evidence,” because “a reasonable juror could have concluded that the ‘Defendants
4 used investigative techniques that were so coercive and abusive that they . . . should
5 have known that those techniques would yield false information.’” *Gantt*, 717 F.3d at
6 708. Indeed, the Ninth Circuit noted that the Court was correct in recognizing that
7 “the plaintiffs produced enough proof of their claim of fabrication of evidence to both
8 survive a motion for judgment as a matter of law and to have the jury instructed on
9 that theory.” *Id.* at 708–09. Accordingly, the Defendants’ motion for summary
10 judgment on Plaintiffs’ fabrication-of-evidence claim is **DENIED**.

11 2. *Brady violation*

12 Defendants also contend that they are entitled to qualified immunity from
13 Plaintiffs’ *Brady* violation claims. In the alternative, Defendants assert that Plaintiffs
14 cannot prove a *Brady* violation as a matter of law.

15 “*Brady* suppression occurs when the government fails to turn over even
16 evidence that is known only to police investigators and not to the prosecutor.”
17 *Youngblood v. West Virginia*, 547 U.S. 867, 869–70 (2006) (per curiam) (citation and
18 quotation marks omitted). *Brady*’s requirement to disclose material exculpatory and
19 impeachment evidence to the defense applies equally to prosecutors and police
20 officers. *Tennison*, 570 F.3d at 1087; *Kyles v. Whitely*, 514 U.S. 419, 437–38 (1995).
21 To state a *Brady* violation claim the plaintiff must allege that (1) the withheld
22 evidence was favorable either because it was exculpatory or could be used to impeach,
23 (2) the evidence was suppressed by the government, and (3) the nondisclosure
24 prejudiced the plaintiff.” *Smith v. Almada*, 640 F.3d 931, 939 (9th Cir.2011); *accord*
25 *Milke v. Ryan*, 711 F.3d 998, 1012–13 (9th Cir. 2013).

26 Here, Plaintiffs’ *Brady* claim was premised on the police officers’ failure to
27 disclose that Rosemond told them that he had been robbed by *Gantt* in the past.
28 Plaintiffs contend that they could have used that information to show Rosemond’s

1 animosity towards Gantt and thereby impeach his story. Defendants argue that the
2 detectives are entitled to qualified immunity on the *Brady* question because they assert
3 that there was no clearly established law that put them on notice that this *particular*
4 evidence constituted *Brady* material. This argument is specious.

5 In *Brady*, which was settled law at the time of Plaintiffs' trial, the Supreme
6 Court held that "the suppression by the prosecution of evidence favorable to an
7 accused upon request violates due process." *Brady v. Maryland*, 373 U.S. 83, 87
8 (1963). In *Giglio v. U.S.*, 405 U.S. 150, 154 (1972), the Supreme Court extended the
9 *Brady* disclosure duty to impeachment information as well as exculpatory evidence.
10 Thus, witness impeachment information is required to be disclosed if the reliability of
11 the witness may be determinative of the defendant's guilt or innocence. *Id.*
12 Consequently, it was clearly established at the time that police officers were required
13 to turn over any material impeachment evidence.

14 Rosemond's testimony was clearly material impeachment evidence. The record
15 establishes that the government's weak case against Plaintiffs primarily hinged on
16 Rosemond's identification of Plaintiffs. Indeed, after Rosemond recanted his
17 testimony, the government's case collapsed. Thus, any evidence that could impeach
18 Rosemond's identification was material.

19 Defendants argue that even if the evidence was material, it was cumulative to
20 the other impeachment evidence presented at trial: Rosemond's convictions, parole,
21 drug use, and theft of the murder victim's ATM card. But none of this impeachment
22 evidence involves Rosemond's animosity or bias towards Gantt. Consequently, this
23 evidence was not cumulative impeachment evidence and properly constituted *Brady*
24 material the officers were required to disclose.

25 In the alternative, Defendants argue that the detectives' failure to disclose this
26 evidence cannot, as a matter of law, make out a *Brady* violation because the evidence
27 is inculpatory rather than exculpatory. This argument is contradicted by the Ninth
28 Circuit's reversal order. In *Gantt*, the Ninth Circuit held that this Court erred when it

1 failed to give a *Brady* instruction without explanation. *Gantt*, 717 F.3d at 709. The
2 Ninth Circuit acknowledged Plaintiffs’ argument that they could have used that
3 information as evidence of Rosemond’s animosity towards Gantt and thus impeach his
4 story. *Id.* But the Ninth Circuit also acknowledged that another reasonable
5 explanation for declining to give a *Brady* instruction was that the Court determined
6 that the police were not at fault for failing to see the mitigating value of the evidence.
7 *Id.* It noted that the police could have reasonably viewed the statement as more
8 incriminating than mitigating because it showed Gantt’s propensity to rob and his
9 familiarity with the person he purported to identify. *Id.* The mere fact that the Ninth
10 Circuit acknowledged that the evidence was susceptible to two different analyses
11 forecloses Defendants’ conclusion that Plaintiffs have failed to make out a *Brady*
12 claim as a matter of law. Accordingly, the **DENIES** the Defendants’ motion for
13 summary judgment on Gantt’s and Smith’s second claim for relief for *Brady* violation.

14 3. *Conspiracy*

15 Defendants assert that they are entitled to qualified immunity from Plaintiffs’
16 conspiracy violation claims. In the alternative, Defendants assert that Plaintiffs cannot
17 prove their conspiracy claims as a matter of law.

18 A conspiracy theory can support liability under § 1983. *Franklin v. Fox*, 312
19 F.3d 423, 441 (9th Cir. 2002). To prove a § 1983 conspiracy, the plaintiff must show
20 “an agreement or meeting of the minds to violate constitutional rights.” *Id.* Each
21 participant in the conspiracy is not required to know the exact details of the plan, but
22 each must at least share the common objective of the conspiracy. *Id.*

23 Plaintiffs’ assert that there was a conspiracy to violate their civil rights because
24 Detectives Lane and Reyes—who they assert violated their constitutional rights—
25 were partners and at the time of their there was a competition in the homicide unit to
26 solve murders. Defendants argue that qualified immunity should shield them from
27 conspiracy liability because there is not “clearly established law that simply being law
28 enforcement partners working in a unit where competition was away of bonding with

1 colleagues could subject them to civil liability.” (Mot. at 16.) This argument
2 misconstrues the Plaintiffs’ conspiracy allegations. Plaintiffs do not allege that the
3 object of the conspiracy was to solve the homicide for the purpose of the competition,
4 but rather to solve the homicide by violating Plaintiffs’ constitutional rights—by
5 fabricating evidence and failing to comply with Brady disclosures. Plaintiffs assert
6 that there was an agreement or common objective to engage in the illegal conduct
7 implicated in this lawsuit. Accordingly, the cases that create the clearly established
8 right to Brady disclosures and to be free from subjection criminal charges based on
9 false evidence that was deliberately fabricated by the government are sufficient law to
10 clearly establish civil liability for conspiring to do so.

11 In the alternative, Plaintiffs assert Detectives Lane and Reyes’ partnership and
12 the existence of a competition in the homicide unit to solve murders cannot, as a
13 matter of law, be sufficient evidence to conclude that there was a conspiracy to violate
14 Plaintiffs’ civil rights. But this is properly a question of fact that should go to the jury.
15 Accordingly, the Court **DENIES** the Defendants’ motion with respect to Gantt’s
16 fourth and Smith’s tenth claim for relief based on Conspiracy under 42 U.S.C § 1983.

17 **B. *Monell* liability**

18 Section 1983 allows for a civil action against any person who, under color of
19 law, causes the “deprivation of any rights, privileges, or immunities secured by the
20 Constitution and laws.” 42 U.S.C. § 1983. While the statute does not define “person”
21 or address whether a governmental unit may be sued under its provisions, the United
22 States Supreme Court in *Monell* held that a local government may be sued under
23 § 1983 “when execution of a government’s policy or custom, whether made by its
24 lawmakers or by those whose edicts or acts may fairly be said to represent official
25 policy, inflicts the injury.” *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 694
26 (1978). A local government entity will be liable “only where the entity’s policies
27 evince a deliberate indifference to the constitutional right and are the moving force

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1 behind the constitutional violation.” *Edgerly v. City & Cnty. of S.F.*, 599 F.3d 946,
2 660 (9th Cir. 2010).

3 To hold a municipality liable for the actions of its officers, a plaintiff must
4 allege one of the following: “(1) that a [municipal] employee was acting pursuant to
5 an expressly adopted official policy; (2) that a [municipal] employee was acting
6 pursuant to a longstanding practice or custom; or (3) that a [municipal] employee was
7 acting as a ‘final policymaker.’” *Lytle v. Carl*, 382 F.3d 978, 982 (9th Cir. 2004).

8 Plaintiffs allege in their complaint that that the City of Los Angeles has ratified
9 customs and practices which permit and encourage its officers to unjustifiably,
10 unreasonably, and unlawfully subject persons known to be innocent to prosecution—
11 specifically African Americans. (Compl. ¶ 89.) Plaintiffs further allege failure to
12 discipline for and deliberate indifference to fabrication of evidence and witness
13 coercion. (*Id.* 90–91.) But Plaintiffs have not presented any evidence to support their
14 allegations that the City caused any of their constitutional violations. Plaintiffs do not
15 articulate any specific City policy that has that resulted in their constitutional
16 violations, nor any specific incidents of supervisors’ failure to discipline for or
17 deliberate indifference to constitutional violations. Instead, in opposing the summary-
18 judgment motion, Plaintiffs focus on the fact that the *City* has not produced any
19 evidence that Plaintiffs have insufficient evidence to carry its burden of persuasion at
20 trial. This is improper. Plaintiffs conclusory allegations fail to surmount *Monell*’s
21 high barrier to municipal liability at this summary-judgment stage. Accordingly, the
22 Court **GRANTS** the City’s motion with respect to *Monell* liability in this case.

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1 **V. CONCLUSION**

2 For the reasons discussed above, the Court **DENIES** the Defendants' Motion
3 for Summary Judgment with respect to the deliberate-fabrication-of-evidence, *Brady*,
4 and conspiracy claims. (ECF No. 269.) The Court **GRANTS** the Defendants' Motion
5 with respect to Plaintiffs' *Monell* claim. (*Id.*) A judgment will issue.

6 **IT IS SO ORDERED.**

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8 May 7, 2014

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12 **OTIS D. WRIGHT, II**
13 **UNITED STATES DISTRICT JUDGE**